United States Court of Appeals

for the

District of Columbia Circuit

TRANSCRIPT OF RECORD

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BRIEF AND APPENDIX
FOR APPELLANT

IN THE

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA

April Term, 1942

UNITED STATES
COURT OF APPEALS FOR THE
DISTRICT OF COLUMBIA
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No. 8225

942

MARION C. MYERS, *Appellant*,

v.

H. L. RUST COMPANY, a Corporation, *Appellee*.

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MARION C. MYERS, *Appellant,*

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H. L. RUST COMPANY, a Corporation, *Appellee.*

BRIEF AND APPENDIX FOR APPELLANT.

JURISDICTIONAL STATEMENT.

This is an appeal from two judgments of the Municipal Court of the District of Columbia, one overruling appellant's motion to stay the issuance of a writ of restitution to appellee for premises known as Apt. No. 85, 2101 Connecticut Avenue, N. W., in the District of Columbia, and the other overruling appellant's motion for reconsideration of denial of her motion for stay of restitution and for indefinite extension of the stay already entered, and to quash the writ of possession issued for said premises then and now occupied by appellant as tenant of appellee. This court has jurisdiction by virtue of Sec. 17-104 (18:29) of the District of Columbia Code, 1940 edition; U. S. C., Title 28, Sec. 861a, abolishing the writ of error; and Rule 3, on Appeals from the Municipal Court, under Title II of the Special Rules of this court governing review of cases from the Municipal Court, etc., effective February 15, 1941. Appellant petitioned this Honorable Court for allowance of an appeal from the Municipal Court, and the appeal was allowed by this court on June 26, 1942.

STATEMENT OF CASE.

Appellant, as tenant-defendant in the court below, was sued by appellee, as landlord-plaintiff, for possession of the aforesaid premises, upon the sole ground that the tenancy had been terminated by service upon appellant of a thirty-day notice to quit (R. 3). Appellant answered that the one-year lease of said apartment held by her had been renewed for an additional year, beginning July 1, 1941, under the option of renewal therein contained, at the same rental of $200. per month (R. 5). Jury trial was requested by appellant (R. 6) and ordered for December 2, 1941 (R. 7), but no trial was had because on December 2, 1941, appellee, through its present counsel, and appellant, through her former counsel, stipulated that judgment for possession be entered as of December 2, 1941, with a stay of restitution until January 31, 1942, provided that all intervening rent for the premises be promptly paid in accordance with the provisions of the lease (R. 8). Said judgment for possession and stay of restitution were accordingly entered on December 2, 1941, the date of the enactment of the Emergency Rent Act for the District of Columbia (Act of December 2, 1941, c. 553, 55 Stat. 788). Appellant paid said rent for the months of December, 1941, and January, 1942, and appellee accepted the same (R. 16). It is undisputed that appellant is in possession of said premises and not in default in the payment of rental, and that appellee's claim for possession is based only upon the service of the aforesaid thirty-day notice to quit and judgment for possession, and that appellee does not contend that it seeks possession for any purpose other than to rent to another tenant, or for any default or claimed default of the appellant (R. 17). Appellant has duly tendered to appellee rental for said premises for all of the months subsequent to January, 1942, and is not now in default of rental or otherwise in default (R. 17). On January 28, 1942, appellant moved the court below to stay the issuance of the writ of restitution of said premises (R. 9) for the reason that the Administrator of Rent Control of the District of Columbia had exclusive jurisdiction of the case. On March 27, 1942, the lower court denied said motion (R. 10) and appellant excepted thereto (R. 11). On March 27, 1942, appellee requested the clerk of the Municipal Court to issue the writ of restitution (R. 12) and on said date it was issued. On March 30, 1942, the appellant moved the lower court to reconsider denial of her motion for stay of restitution and for indefinite extension of the stay already entered and to quash said writ of possesion (R. 13), and, on the same day the court directed that execution of the writ be deferred pending action on said motion for reconsideration, etc. On April 2, 1942, appellant filed in the lower court her affidavit and exhibits attached thereto as part thereof in support of said motion for reconsideration, etc. (R. 15). On April 4, 1942, the court denied said motion for reconsideration (R. 30) and appellant excepted thereto (R. 31). On April 6, 1942, appellant filed in this court her application for allowance of appeal from the lower court's denial of her said two motions. Appellant, in due course, presented to the lower court her proposed bill of exceptions and a statement of points on which she intended to rely on appeal (R. 33). On April 13, 1942, appellee moved the lower court to strike appellant's said affidavit and exhibits (R. 39) and appellant answered said motion to strike (R. 40). The lower court granted the motion to strike said affidavit and exhibits (R. 42) and appellant excepted to the court's ruling (R. 43). On April

16, 1942, appellant's undertaking in supersedeas was approved by the lower court (R. 38). The court refused to sign appellant's proposed bill of exceptions to include appellant's exception to the striking of her said affidavit and exhibits. After two extensions by the court of the time for filing the bill of exceptions (R. 44) the court signed the same on May 4, 1942, over the objection of appellant as being incomplete, and the same was filed in the lower court on that day (R. 46).

STATUTE INVOLVED.

District of Columbia Emergency Rent Act, approved December 2, 1941, *supra,* Sec. 5 (b) and sub-paragraphs (1), (2), (3) and (4) thereof:

> "(b) No action or proceeding to recover possession of housing accommodations shall be maintainable by any landlord against any tenant, notwithstanding that the tenant has no lease or that his lease has expired, so long as the tenant continues to pay the rent to which the landlord is entitled, unless—
>
> "(1) The tenant is (a) violating an obligation of his tenancy (other than an obligation to pay rent higher than rent permitted under this Act or any regulation or order thereunder applicable to the housing accommodations involved or an obligation to surrender possession of such accommodations) or (b) is committing a nuisance or using the housing accommodations for an immoral or illegal purpose or for other than living or dwelling purposes, or
>
> "(2) The landlord seeks in good faith to recover possession of the property for his immediate and personal use and occupancy as a dwelling, or
>
> "(3) The landlord has in good faith contracted in writing to sell the property for immediate and personal use and occupancy as a dwelling by the purchaser and that the contract of sale contains a representation by the purchaser that the property is being purchased by him for such immediate and personal use and occupancy, or
>
> "(4) The landlord seeks in good faith to recover possession for the immediate purpose of substantially

altering, remodeling, or demolishing the property and replacing it with new construction, the plans for which altered, remodeled, or new construction having been filed with and approved by the Commissioners of the District of Columbia.''

55 Stat. 788, c. 553.

STATEMENT OF POINTS.

1. Sec. 5 (b) and (b)-(1) of the Emergency Rent Act, approved December 2, 1941, *supra,* suspends the execution of a judgment for possession where, as in this case, such execution would have to be accomplished subsequent to the approval of said Rent Act, and also during and subsequent to all operative dates thereunder.

2. Remedial legislation for the benefit and protection of tenants is to be liberally construed to effectuate the purposes and objectives of the statute.

3. By the Rent Act, Congress delegated a retrospective standard of legislative authority to the Administrator of the Rent Act.

4. An action or proceeding in the Municipal Court of the District of Columbia which had matured into a judgment but had not been executed is governed by Sec. 5 (b) and (b)-(1) of the Emergency Rent Act, and despite said judgment the action or proceeding is pending for the purposes of invoking the Rent Act.

5. The award of execution is an essential part of every judgment passed by a court exercising judicial power.

6. Sec. 5 (b) and (b)-(1) of the Rent Act, is applicable and controlling and appellee landlord cannot evict the appellant except for the causes specified in the Act which are not here applicable. Appellant has always had, and now has, the status of a tenant as defined in said Rent Act; and there always has been and there is now, the admitted relation of landlord and tenant.

7. The language of Sec. 5 (b) of the Rent Act, is an effective bar against further roceedings in this case, there being no claim that the case comes within one of the exceptions written in the Act which prevents an eviction, circumscribes rights which existed before it became law, and plainly provides that no ''action'' or

(3) The said stipulation of December 2, 1941, operated to prolong the tenancy by agreement of the parties at the same rental specified in the lease, and said tenancy was in force while the Emergency Rent Act for the District of Columbia was in force.

(4) There is no contention on the part of appellee that its claim for possession is based other than upon the thirty-day notice to quit and judgment for possession, or that possession is desired other than to rent to some other tenant, or that appellant is violating any of the provisions of the Emergency Rent Act, or that appellee is entitled to possession of the premises under the provisions of said Act.

(5) Any such step by the court or appellee landlord is not supported by applicable local decisions, and was in direct conflict with a recent decision of the Municipal Court of the District of Columbia involving said Emergency Rent Act.

ARGUMENT.

Section 5 (b) of the Emergency Rent Act of the District of Columbia suspends the execution of a judgment for possession.

The execution of a judgment for possession of housing accommodations is suspended by Sec. 5 (b) of the Emergency Rent Act, where such execution would have to be accomplished during the operative period of the Act.

The Emergency Rent Act should be construed liberally.

The provisions of Sec. 1 of the Rent Act clearly demonstrate the purpose and policy of Congress to enact remedial legislation to rectify housing conditions in the District of Columbia, and such legislation is to be construed liberally to effectuate the purposes and objectives of the statute. *Socony-Vacuum Oil Company* v. *Smith,* 305 U. S. 424; 83 L. ed. 265.

Sec. 5 (b) which restricts the rights of landlords to evict tenants comports with the general policy of the Act, because this provision, by curtailing the right of eviction offsets the abnormal demand for living quarters in the City of Washington, and thus tends to stabilize rents.

The Rent Act is retrospective.

The legislative history of the Act is silent on the question of its retrospective operation. See House Report No. 1317 and Senate Report No. 827 which accompanied H. R. 5890. The debates on the floor of the House and Senate do not discuss this issue, but the several provisions of the Act bespeak the past. Thus Sec. 2 prescribes that maximum rent ceilings and minimum service standards are to be determined as of January 1, 1941. Claims for adjustments of rentals and service standards may be predicated upon changes since January 1, 1941.

It is submitted that Congress delegated a retrospective standard of legislative authority to the Administrator of the Rent Act. *Panama Refining Company, et al.* v. *Ryan, et al.*, 293 U. S. 388; 79 L. ed. 446.

The action or proceeding in the lower court was pending when the Rent Act became effective.

In this section of the brief, we shall assume, for the sake of argument, that the Rent Act in its entirety became effective thirty days after its enactment or on January 1 or 2, 1942.

The precise issue is whether an action or proceeding in the Municipal Court of the District of Columbia which had matured into a judgment for possession remaining unexecuted at the operative date of the Rent Act, is governed by Sec. 5 (b) of said Act. In other words, despite the judgment, was the action or proceeding pending for the purposes of invoking the Rent Act? Mr. Chief Justice Marshall, in *Wayman, et al.*, v. *Southard, et al.*, 10 Wheat. 1, 23; 6 L. ed. 253, 258, stated:

> "The jurisdiction of a court is not exhausted by the rendition of its judgment, but continues until that

> judgment shall be satisfied. Many questions arise on the process subsequent to the judgment, in which jurisdiction is to be exercised. It is, therefore, no unreasonable extension of the words of the act, to suppose an execution necessary for the exercise of jurisdiction."

It follows that the judgment for possession in the lower court did not terminate the action or proceeding. It was pending on January 1 and 2, 1942.

A case squarely in point on this issue is *Hyman* v. *Gordon,* 185 N. Y. Supp. 301, wherein it was held at p. 303 that

> "* * * an action, notwithstanding the entry of judgment, is still pending for the purposes of instituting supplementary proceedings. * * * a summary proceeding is not ended with the final order, but is still pending until the direction of the final order awarding possession of the premises to the petitioner is carried out by the issuance and execution of the warrant."

See also the case of *Sweetser, et al.,* v. *Fox, et al.,* 43 Utah 40, 45; 134 Pac. 599, 601; 47 L. R. A. (N. S.) 145, 148; Ann. Cas. 1916 C. 620, 622, the court said:

> "The rule in that regard in force at common law is well stated by the Court of Appeals of New York in the case of Wegman v. Childs, 41 N. Y. 159, where it is stated thus: 'An action is pending in a court, though judgment has been recovered therein, as long as such judgment remains unsatisfied.' "

For additional cases see *Mitchell & Rammelsburg Furniture Co.* v. *Sampson* (C. C. N. D. Fla. Dec. 30, 1889), 40 Fed. 805; *Mauney* v. *Pemberton,* 75 N. C. 219; *Scherrer* v. *Caneza,* 33 La. Ann. 314.

It is patent that despite the rendition of the judgment in this case, the action or proceeding was pending at the time the Rent Act went into effect.

The issue is whether Sec. 5 (b) of the Rent Act is controlling.

The case of *People of the State of New York ex. rel. Rayland Realty Co., Inc.,* v. *Fagan,* 194 App. Div. 185, 186-187; 186 N. Y. Supp. 23, 25, affirmed without opinion in 230 N. Y. 653; 130 N. E. 931, is conclusive on this issue.

On September 27, 1920, New York enacted a rent control bill, Chapter 942 of the Laws of 1920. This legislation, which expired on or about November 1, 1922, was similar to the District of Columbia Emergency Rent Act. Section 19 of this chapter bears a striking similarity to Sec. 5 (b) of our Rent Act. In substance, it precluded a landlord from evicting a tenant except for specified causes.

In the Fagan case, *supra,* which involved the New York statute, the landlord had acquired the premises subjct to a lease to Reines, the tenant, which expired on April 30, 1920. Plaintiff instituted summary proceedings to oust the tenant from the premises on May 7, 1920. The order or judgment for possession was entered on the same day. The court stayed the warrant to evict the tenant from the premises until August 1, 1920. This order was amended on August 2, by stipulation extending the stay until October 1, 1920. On October 4, the landlord applied to the clerk of the court for a warrant to execute the judgment. The clerk refused to issue the warrant on the ground that the New York Rent Control Bill governed the proceedings. The landlord thereupon applied for mandamus to compel the clerk to issue the warrant.

We quote from the opinion of the court:

> "Was the summary proceeding pending at the time of the enactment of Chapter 942 of the Laws of 1920? * * *
> "The said statute provides 'In a pending proceeding for the recovery of real property in such a city on the ground that the occupant holds over after the expiration of his term, a warrant shall not be issued,' etc. Thus the statute expressly declares the legislative purpose is to stay the warrant in a pending proceeding. A warrant can have no legal existence until after the final order. If the final order *ex propriore vigore,* ended the proceeding, the proceeding could not be pending when

> the warrant, the very subject-matter of the provision, came into existence. Further, the statute of summary proceeding declares that the issuing of the warrant for the removal of a tenant from demised premises 'cancels the agreement for the use of the premises, if any, under which the person removed held them, and annuls accordingly the relation of landlord and tenant.' (Code Civ. Proc., sec. 2253.) It follows that until the warrant issues the relation of landlord and tenant exists, and so the proceeding is not terminated by the final order. I think that maugre the final order this proceeding should be regarded as 'pending' within the purview of this statute." (pp. 186-187.)

In *People of the State of New York ex rel. Realty Corp.* v. *Murphy,* 194 App. Div. 530, suit to obtain possession of the premises was filed on September 2, 1920. On September 16, the court entered a judgment for the landlord with a stay of the warrant to October 1, 1920. The Appellate Court, although expressing some doubt, followed the *Fagan* case, *supra.* To the same effect are *Hyman* v. *Gordon,* 185 N. Y. Supp. 301, and *Marcus Brown Holding Co.* v. *Feldman, et al.* (D. C. S. D. N. Y., Dec. 15, 1920), 269 Fed. 306.

On January 27, 1942, Judge Nathan Cayton rendered an opinion in the Municipal Court of the District of Columbia in Landlord and Tenant Case No. 940-681, entitled *Metropolitan Life Insurance, Inc., Plaintiff,* v. *Mrs. Suzanne Schmidtman, Defendant,* which is a case practically on all fours with the instant one, except for additional questions relating to character of use of the premises which are not here material. In that case judgment for possession was entered on December 17, 1941, with a stay of execution until December 24, 1941, following a notice to quit the premises on or before December 1, 1941, which notice was served on October 3, 1941. On December 30, 1941, plaintiff requested that a writ of restitution issue to oust the defendant from the premises and a motion to stay was filed by the defendant who contended that the Emergency Rent Act gave the Administrator of Rent Control exclusive jurisdiction. In an opinion, Judge Cayton, when referring to Sec. 5 (b) of the Act said:

> "The effect of that language is to stay all proceedings in this Court pending on January 2, 1942, which was the effective date of the Act. I construe that to mean that although judgment had been entered and a writ of restitution issued, the Rent Act operates to prevent any further steps being taken on the judgment or on the writ of restitution which followed. The Act prevents an eviction, circumscribes rights which existed before it became law, and plainly provides that no action or proceeding of this kind 'shall be maintainable' after its effective date. Defendant's counsel have submitted authorities tending to establish that the Act is retrospective in its operation. I do not believe that to be the decisive question in the case. The simpler test is whether the case can be said to be 'pending' at the time the Act became effective (on January 2, 1942) or at the time it was submitted on the present motion. I think the answer to both propositions is in the affirmative.
>
> "I think that the relation of landlord and tenant continues until the execution of the writ of restitution, and that when the new Rent Act went into effect every tenant in possession came under its protective cloak. (See *People* v. *Fagan*, 194 App. Div. 185, 186 N. Y. Supp. 23, affirmed without opinion in 230 N. Y. 653, 130 N. E. 931.) Moreover, I think that is true, whatever the status of any case pending against him in this court.
>
> "I, therefore, rule that whether it be said that the Act generally or Section 5 (b) in particular are retrospective in their operation or not, further proceedings in this case which would result in an eviction are prohibited by the new law, unless there is a showing of a violation of one of its provisions."

See also the case of *J. C. Weedon, Inc.* v. *Mrs. Stanley Herb,* Municipal Court D. C., L. & T. No. 941-657, decided by Judge Cayton on January 27, 1942, wherein a thirty-day notice for possession expired early in December, 1941, and the action was instituted on December 11, 1941, returnable

December 29th, and continued to January 5, 1942, the court holding that under Sec. 5 (b) of the Rent Act the action was still pending for all purposes, although continued at the instance of the Municipal Court or even continued over the objection of the plaintiff, citing the case of *Metropolitan Life Insurance, Inc.* v. *Schmidtman, supra.*

It is submitted that on the authority of the above cases, Sec. 5 (b) was applicable, and that the appellee landlord could not evict the appellant tenant except for the causes specified in the Act; and further, that all of the provisions of our District of Columbia Code relating to executions on judgments for possession, while not repealed, were suspended or made inoperative by the Rent Act in a case of this kind, regardless of judgments, agreements or leases, Congress having enjoined execution.

The relation of landlord and tenant between appellee and appellant was in effect on the operative date of the Emergency Rent Act.

In this section of the brief we shall again assume, for the sake of argument, that the Rent Act was effective January 1 and 2, 1942.

Sec. 5 (b), quoted above, precludes the landlord from maintaining any action or proceeding against the tenant notwithstanding the tenant had no lease or that the lease had expired.

Sec. 11 (f) provides that "the term 'tenant' includes a * * * person entitled to the use or occupancy of any housing accommodations."

The issue is whether appellant had the status of a tenant as defined in the above section of the Act on January 1 or 2, 1942.

Here we have on December 2, 1941, and for the months of December, 1941, and January, 1942, an admitted landlord and tenant relation, contemplated and covered by the aforesaid stipulation between the parties, which operated to prolong the tenancy at the same rate of rental provided for in the lease, and for the two months last above mentioned appellant paid, and appellee accepted, the agreed rental, and this tenancy was thus fully in effect on the operative date of the Emergency Rent Act. Hence, as of January 1 or 2, 1942, appellant was a tenant and was entitled to invoke Sec. 5 (b) of the Act.

The mere obligation to surrender possession gives no right of ouster.

It is also respectfully submitted that the above-quoted sub-paragraph (1) of Sec. 5 (b) clearly excludes from the exceptions giving the right to oust the tenant the "obligation to surrender possession of such accommodations"; so that any obligation which might otherwise exist to surrender the premises because of the aforesaid judgment for possession with stay of restitution is expressly stated in Sec. 5 (b)-(1) to have been abrogated.

The execution of a writ of restitution constitutes an "action" or "proceeding" within the prohibition of the Rent Act.

Congress provides in Sec. 5 (b) of the Rent Act, that no "action" or "proceeding" to recover possession of housing accommodations shall be "maintainable" by any landlord against any tenant, so long as the tenant pays the maximum ceiling rent and is not violating an obligation of his tenancy, where the landlord cannot bring himself within any of the sections in his favor under Sec. 5 (b), as to which it is submitted the appellee landlord had the burden of proof affirmatively to establish his right to possession under the Act, and there are no further exceptions in his favor. If it be argued by appellee that execution of a writ of restitution on a judgment is not an "action," then certainly it should concede that it is a "proceeding." No broader language could have been used by Congress to refer to a situation of this kind, where we have a pending case, an unexecuted judgment, an admitted landlord and tenant relation and the tenant paying the rent and desiring to stay on, all on operative dates of the statute, namely, December 2, 1941, January 1 and 2, 1942, and January 28 and 31, 1942. The tenant does not seek to break any agreement, but Congress has suspended the force of the old status for the public good in exercise of police power during the war emergency, and also temporarily suspended the court's jurisdiction.

See 38 C. J. 336-337:

> "*C. In Pleading and Practice.* In respect to actions, 'maintain' may be used in three meanings. First it may mean to begin; to bring; to commence; to institute. In another sense it may mean to carry on; to continue or preserve in or with; also, to commence and prosecute to a conclusion. And also it may mean to commence and prosecute to a conclusion that which has already been begun. In a restricted sense, 'maintain,' when applied to actions, carries a different meaning from 'begin' or 'institute,' and implies that an action must be begun before it can be maintained. So, in pleading, 'maintain' has a distinct technical signification; it signifies to support what has already been brought into existence. In some instances 'maintain' may comprehend the institution as well as the support of the action, including the commencement of or right to institute an action. One often speaks of maintaining an action, having reference to one yet to be instituted. So while a prohibition against maintaining an action may not include the commencement thereof, such a prohibition may imply a prohibition against beginning or commencing it."

Also P. 338:

> "*Of action.* While it is possible under certain circumstances to construe the phrase 'maintenance of an action,' as including all steps from the making of the writ to the recovery of final judgment, and while there are many authorities giving the word this meaning in certain connections, in other instances 'maintenance' as applied to actions is used in contradistinction to

> 'recovery,' and not including the institution or beginning of an action, in accordance with the strict legal meaning or signification given to the word 'maintain' as applied to actions."

See also 21 Am. Jur. 17 (referring to the scope of executions):

> "*Proceedings* after judgment in aid of execution form a part of this article, * * *" (italics ours)

And P. 29:

> "It is a rule that the issuing of an execution is governed by the law in existence at the time of its issuance."

Also 21 R. C. L. 1262, (when referring to the word "process"), says:

> "The term is sufficiently comprehensive to include an attachment, garnishment, or execution."

Appellant does not seek to set aside the judgment for possession.

Appellant does not seek to set aside the judgment for possession secured by appellee in pursuance of the stipulation; nor did the motions denied by the lower court seek to set the judgment aside, but, on the contrary, appellant's motion was only to stay the issuance of the writ of restitution on the ground that the Emergency Rent Act had suspended the operation and efficacy of the judgment. Appellee's rights, if fixed at the effective date of the Act, were thereupon suspended by Congress, which, by the Act, has disturbed fixed or vested rights. Congress has not sought to disturb judgments for possession and has confined the prohibition to the "action" or "proceeding" of eviction in execution thereof. Moreover, the very spirit of the Rent Act is to relieve against consent in cases. For instance, the tenant cannot even consent to increased rental over the January 1, 1941, freezing date and rate in a pending case before the Administrator of Rent Control, without the Administrator's approval. We have assumed in this section of the brief that the judgment of December 2, 1941, originally had efficacy, although the fact is that on the very day that counsel executed the stipulation, December 2, 1941, the President of the United States signed the Rent Act, thus completing it as an operative statute. Congress had some time theretofore enacted the statute, subject only to the President's approval; so that the mandatory provisions against the issuance of the writ, it is submitted, were in force at the time the stipulation was signed. There is nothing in the Rent Act relating to eviction which postpones its operative date past December 2, 1941.

In support of the proposition that the Rent Act was operative on December 2, 1941, see *Lapeyre* v. *United States,* 17 Wall. 191; 21 L. ed. 606; *Matthews* v. *Zane,* et al., 7 Wheat. 164; 5 L. ed. 425; and *Gardner* v. *Barney,* 6 Wall. 499; 18 L. ed. 890.

CONCLUSION.

In view of the foregoing, it is respectfully submitted:

1. That the lower court improperly exercised jurisdiction by refusing appellant the stay of restitution and by refusing to continue the stay already entered in the case, and further, by refusing to quash the writ of possession entered in the case.

2. That appellee landlord violated the provisions of the District of Columbia Emergency Rent Act by securing the writ of restitution on said judgment for possession as constituting the maintenance of an "action" or "proceeding" prohibited by the Act.

3. That this Honorable Court, by reversal, should direct the lower court to stay restitution under the terms and provisions of the Rent Act, and to quash said writ of possession.

Respectfully submitted,

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August 31, 1942.

APPENDIX

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IN THE

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA.

April Term, 1942

No. 8225

MARION C. MYERS, *Appellant,*

v.

H. L. RUST COMPANY, a Corporation, *Appellee.*

APPENDIX TO BRIEF FOR APPELLANT.

3 MUNICIPAL COURT OF THE DISTRICT OF COLUMBIA

Landlord and Tenant Branch

500 Fourth St., N. W., First Floor
Washington, D. C.

H. L. RUST COMPANY, a Corporation, *Plaintiff,*
1001 15th Street, N. W.

v.

MARION C. MYERS, Apt. 85, *Defendant,*

2101 Connecticut Ave., N. W.
No. L. & T. 936,732

COMPLAINT FOR POSSESSION OF REAL ESTATE

(Filed Nov. 4, 1941)

District of Columbia, ss.:

G. Edward Altemus, ass't. secretary and agent for the plaintiff being first duly sworn, states that plaintiff is entitled to the possession of premises No. Apt. 85-2101 Connecticut Avenue, N. W. located in the District of Columbia, which the defendant holds without right. The premises are in the possession of the defendant, who holds them as a monthly tenant ....
(Here indicate type of tenancy) that said tenancy has been terminated by due service of a notice to quit............
for the period from ....
to ....

Affiant therefore says that plaintiff is entitled to judgment for possession of said property..................
....
(If money judgment is desired, insert here)
.............................., and costs of this suit.

By (s) G. E. ALTEMUS

Subscribed and sworn to before me this 4th day of November, 1941.

(s) ELIZABETH V. FRANZONI
(Notarial Seal) *Notary Public.*
(Seal)

NOTICE

To: MARION C. MYERS, Apt. 85, *Defendant,*
2101 Connecticut Avenue., N. W.

You are hereby notified that, H. L. Rust Company, a corporation has made a claim and is requesting judgment against you for possession of the above named premises.
....
(If money judgment is desired, insert here)

The court will hold a hearing upon this claim on
4 Nov. 17, 1941 at 9:30 o'clock A. M. in the LANDLORD AND TENANT BRANCH, located on the FIRST FLOOR, 500 Fourth St., N. W.

You are required to be present at the hearing in order to avoid a judgment by default.

If you have witnesses, books, receipts, or other writings bearing on this claim, you should bring them with you at the time of the hearing.

If you admit the claim, but desire additional time to pay, you must come to the court and state the circumstances.

You may come with or without a lawyer.

The costs of this case now amounts to $1.00 and you are not required to pay any more if you settle the claim before the hearing.

If you desire any assistance in this matter, you should see the clerk of the court without delay.

(Seal) (Stamped) BLANCHE NEFF
Clerk

(s) WILLIAM H. MacDONALD
Attorney for Plaintiff

BRING THIS NOTICE WITH YOU AT ALL TIMES

* * * * * * * * * *

8 *Stipulation for Judgment of Possession and Stay of Execution*

It is stipulated by counsel for the respective parties that judgment for possession be entered in the above entitled cause as of December 2, 1941, with a stay of execution until the 31st day of January, 1942, provided that all intervening rent for the premises involved be promptly paid in accordance with the provisions of the lease.

In the event of default in the payment of any installment of rent reserved in the lease, and a proper showing being made of such default, a writ of restitution for possession of the property involved may issue forthwith.

JOSEPH T. SHERIER,
1001 15th Street, N. W.,
Attorney for Plaintiff.
MILTON W. KING,
419 Southern Building,
Attorney for Defendant.

* * * * * * * * * *

9 *Motion to Stay Issuance of Writ of Restritution*

(Filed January 28, 1942)

Now comes the defendant, Marion C. Myers, by her attorney, Jerome F. Barnard, and respectfully petitions this Honorable Court to stay the issuance of the Writ of Restitution in the above-entitled proceedings because of the following reasons:

The District of Columbia Emergency Rent Act, approved December 2, 1941, and effective January 2, 1942, has exclusive jurisdiction in the premises.

JEROME F. BARNARD,
Attorney for Defendant,
1422 F. Street, N. W.
Washington, D. C.

To the Clerk of Court:

Please set this matter for hearing before the Presiding Judge in the Landlord & Tenant Branch of the Municipal Court on Friday, the 30th day of January, 1942, at 9:30 o'clock A. M., or as soon thereafter as counsel may be heard.

JEROME F. BARNARD.

Service of copy of the foregoing motion acknowledged this 28th day of January, 1942.

JOSEPH T. SHERIER,
Attorney for Plaintiff.
By L. MASH.

10 *Finding of Court of March 27, 1942 Overruling the Defendant's Motion for a Stay of Issuance of the Writ of Restitution Herein*

Mins. 135, p. 150, March 27, 1942:

Judge Scott: Defendant's motion to stay issuance of writ of restitution overruled.

12 *In the Municipal Court of the District of Columbia the 27th day of March, 1942.*

H. L. Rust Co. v. Marion C. Myers, No. 936-732.

The clerk of said court will please issue a writ of restitution in the above cause for possession of premises Apt. 85, 2101 Conn. Ave., N. W.

LECKIE & SHERIER,
By W. H. MacDONALD,
Attorney for Plaintiff.

* * * * * * * * * *

13 *Motion for Reconsideration of Denial of Defendant's Motion for Stay of Restitution, and for Indefinite Extension of the Stay Already Entered, and to Quash the Writ of Possession Entered Herein.*

(Filed March 30, 1942)

Now comes the defendant, Marion C. Myers, by her attorney, Jerome F. Barnard, and respectfully moves this Honorable Court to reconsider its denial of defendant's motion for a stay of issuance of the writ of restitution herein, and also moves for an indefinite extension of the stay of restitution already entered herein, and further moves to quash the writ of possession issued herein upon the following grounds:

1. The issuance of a writ of restitution herein is violative of Section 5, Sub-paragraphs (b) and (b) (1) of the District of Columbia Emergency Rent Act approved December 2, 1941, and the Administrator of Rent Control has exclusive jurisdiction in the premises.

2. That the said stipulation of December 2, 1941 operated to prolong the relation of landlord and tenant at the rate of rental fixed by the lease until and including January 31, 1942, and the District of Columbia Emergency Rent Act being during the said tenancy fully in effect, the issuance of a writ of restitution terminating said tenancy would be contrary to the provisions of Section 5, Sub-paragraphs (b) and (b)-1, of said Act.

3. Said judgment for possession heretofore entered 14 herein under date of December 2, 1941 is void as being contrary to the provisions of said Section 5, Subparagraphs (b) and (b)-1 of said Act.

JEROME F. BARNARD,
1422 F Street, N. W.,
Attorney for Defendant.

To the Clerk of the Court:

Please set this matter for hearing before Hon. Armond W. Scott of the Municipal Court on Thursday, April 2, 1942, at 9:30 o'clock A. M., or as soon thereafter as counsel may be heard.

JEROME F. BARNARD.

Service of a copy of the foregoing motion acknowledged this 30th day of March, 1942.

JOSEPH T. SHERIER, Per J. A. S.
Attorney for Plaintiff.

* * * * * * * * * *

15 *Affidavit of Defendant in Support of Defendant's Motion for Reconsideration of Denial of Her Motion for Stay of Restitution, etc., filed herein on March 30, 1942*

(Filed April 2, 1942)

District of Columbia, ss.:

Marion C. Myers, being first duly sworn, on oath deposes and says that she is the defendant in the above-entitled cause; that on May 20, 1940 she executed an agreement of lease between herself, as tenant, and the H. L. Rust Company, a corporation, plaintiff herein, as landlord, of premises known as Apt. No. 85, 2101 Connecticut Avenue, N. W., Washington, D. C., for the term of one (1) year, commencing on July 1, 1940, with rental at Two Hundred Dollars ($200.) per month, payable in advance, on the first day of each month; that said lease concluded with the provision that the defendant, as lessee should have the privilege of renewing the lease for a period of one year under the same terms and conditions, and at the same rental, provided written notice was given thirty days prior to the expiration of the lease of the tenant's desire for the renewal. A true photo-static copy of said lease is attached hereto as part hereof; that attached hereto as part hereof are true copies of correspondence between defendant and plaintiff, relating to the tenancy, as follows:

Letter dated May 21, 1941 from Mr. H. L. Rust, Jr.
16 to defendant; and

Letter dated May 23, 1941 from defendant to Mr. H. L. Rust, Jr.;

that the question arose as to whether the defendant had exercised said privilege of renewal; that attached hereto, as part hereof, is letter dated September 22, 1941, to defendant from plaintiff, notifying her to quit the leased premises at the expiration of thirty days from October 1, 1941; that at the time of the service of the said notice to quit the rent was not in default nor was said notice served because of any then default in rent; that plaintiff filed suit for possession on November 4, 1941 upon the ground that the tenancy had been terminated solely by the aforesaid notice to quit; that the defendant contended in an affidavit of defense filed herein that the said lease and tenancy had been renewed for an additional year, to expire on June 30, 1942; that defendant has paid to the plaintiff rental for the said leased apartment for the entire period from the said commencement of the tenancy through and including January, 1942, and the plaintiff has accepted such payments; that attached hereto, as part hereof, is true copy of defendant's registered letter to plaintiff of January 30, 1942, with which she tendered her check to the order of the plaintiff in the sum of $200., as rental for the said apartment for February, 1942; together with the registry receipt and return card; which said payment was not accepted by plaintiff; that attached hereto, as part hereof, is true copy

of defendant's registered letter to plaintiff of February
26, 1942, with which she tendered her check to the order
of the plaintiff in the sum of $400., as rental for the said
apartment for February and March, 1942, together with
the registry receipt and return card; which said payment
was not accepted by plaintiff; that attached hereto, as part
hereof, is true copy of defendant's registered letter
17 to plaintiff of March 30, 1942, with which she
tendered her check to the order of the plaintiff in the
sum of $600., as rental for the said apartment for February,
March and April, 1942, together with the registry receipt
and return card; which said payment was not accepted by
plaintiff; that attached hereto, as part hereof, are the originals of letters from plaintiff to defendant dated February 2, 1942, March 2, 1942, and March 31, 1942, in which plaintiff declined, respectively, to accept the said rental payments and checks therefor for the apartment for the months of February, 1942; February and March, 1942, and February, March and April, 1942; that this defendant has continuously been, and is now, in possession of the said leased premises; that she is not in default in the payment of rentals, and, as hereinbefore stated, has made all of the payments during the period of her occupancy from the commencement thereof through and including January, 1942, all accepted by plaintiff, and has tendered payments of rental to the plaintiff for February, March and April, 1942, which said payments have not been accepted by plaintiff; that she is not violating any obligation of her tenancy nor was she sued upon any such alleged ground, nor is she violating, nor has she violated, any requirements imposed upon her as tenant under the District of Columbia Emergency Rent Act, approved December 2, 1941, and that none of the exceptions specified in Sec. 5, Sub-paragraph (b) and Sub-paragraphs (b)-(1), (2), (3) and (4) of the said Act is applicable in favor of or for the benefit of the landlord plaintiff as against this tenant defendant so as otherwise to entitle plaintiff to possession of the said premises,

nor was the writ of possession applied for, and issued herein, upon any alleged ground of default in payment of rental or failure of the defendant to comply with any of the provisions of the said Emergency Rent Act, nor upon any
alleged claim of plaintiff that any exceptions in Sec.
18 5, Sub-paragraphs (b)-(1), (2), (3) and (4) of said
Act operated to entitle plaintiff to possession of said premises.

MARION C. MYERS.

Subscribed and sworn to before me, this 1st day of April, 1942.

(Seal)

GRACE E. M. GANSE,
Notary Public, D. C.

* * * * * * * * * *

H. L. RUST COMPANY
23 Real Estate Loans and Insurance
1001 Fifteenth Street
Washington, D. C.

September 22nd, 1941

Mrs. Marion C. Myers,
Apartment 85, 2101 Connecticut Avenue,
Washington, D. C.

Dear Madam:

As we are desirous to have again and repossess apartment No. 85, 2101 Connecticut Avenue, N. W., Washington, D. C., which you now hold of us as tenant, we hereby give you notice to remove from and quit the same at the expiration of thirty days from October 1, 1941.

Very truly yours,

H. L. RUST COMPANY,
By: G. EDWARD ALTEMUS,
Assistant-Secretary.

2101 Connecticut Ave., N. W.,
24 Washington, D. C.
January 30th, 1942

H. L. Rust Company,
1001 15th Street, N. W.,
Washington, D. C.

Gentlemen:

I enclose herewith my check to your order for the sum of $200.00 in payment of rental for my apartment No. 85 at 2101 Connecticut Avenue, N. W., Washington, D. C. for the month of February, 1942.

Very truly yours,
MARION C. MYERS

Registered mail.
Returned receipt requested.

---

25 2101 Connecticut Ave., N. W. Apt. 85
Washington, D. C.

February 26, 1942

H. L. Rust Company
1001 15th Street,
Washington, D. C.

Gentlemen:

Enclosed please find my check for $400.00 for the February and March rent of apartment 85 at 2101 Connecticut Avenue N. W., Washington, D. C.

Very truly yours,

MRS. MARION C. MYERS

Enclosure

26 Apt. 85, 2101 Connecticut Ave., N. W.,
Washington, D. C.

March 30, 1942.

H. L. Rust Company,
1001 15th Street, N. W.,
Washington, D. C.

Gentlemen:

Enclosed please find my check for $600.00 for the February, March and April rent of Apartment 85, at 2101 Connecticut Avenue, N. W., Washington, D. C.

Very truly yours,

MARION C. MYERS
(Mrs. Marion C. Myers)

Enclosure
Registered Mail
Return receipt requested

---

27 H. L. RUST COMPANY
Real Estate Loans and Insurance
1001 Fifteenth Street
Washington, D. C.

February 2, 1942

Miss Marion C. Myers,
2101 Connecticut Avenue, N. W.
Washington, D. C.

Dear Miss Myers:

Upon advise of counsel, we are herewith enclosing your check, drawn to our order, in amount of $200, and tendered in payment of rent for apartment 85, at 2101 Connecticut Avenue, N. W., for the month of February.

Very truly yours,
H. L. RUST COMPANY

ECS : ml
Enc.

By EDWIN C. STEFFE
Edwin C. Steffe

28

H. L. RUST COMPANY
Real Estate Loans and Insurance
1001 Fifteenth Street
Washington, D. C.

March 2, 1942

Mrs. Marion C. Myers
2101 Connecticut Avenue, N. W.
Washington, D. C.

Dear Mrs. Myers:

I am returning herewith your check dated March 1, 1942, for $400.

We will not accept any rent from you for this apartment, until the pending litigation has been concluded.

Very truly yours,

H. L. RUST COMPANY
G. EDWARD ALTEMUS
G. Edward Altemus

GEA:pl
Enc.

29

H. L. RUST COMPANY
Real Estate Loans and Insurance
1001 Fifteenth Street
Washington, D. C.

March 31, 1942

Registered Mail—Return Receipt Requested

Mrs. French Myers
Apt. 85, 2101 Connecticut Avenue
Washington, D. C.

Dear Mrs. Myers:

I am returning your check for $600.00.

We will not accept any rent from you for your apartment at 2101 Connecticut Avenue until the conclusion of the present litigation.

Very truly yours,

H. L. RUST COMPANY
G. EDWARD ALTEMUS
G. Edward Altemus

GEA:k
Enclosure.

30 *Court's finding of April 4, 1942, overruling defendant's said motion for reconsideration of denial of defendant's motion for stay of restitution, and for indefinite extension of the stay already entered, and to quash the writ of possession entered herein.*

April 4, 1942, Mins. 135, page 161:

Judge Scott—Defendant's motion for reconsideration of denial of her motion for stay of execution overruled.

BRIEF ON BEHALF OF APPELLEE.

IN THE

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA.

No. 8225

MARION C. MYERS, *Appellant*,

v.

H. L. RUST COMPANY, a Corporation, *Appellee.*

UNITED STATES
COURT OF APPEALS FOR THE
DISTRICT OF COLUMBIA
FILED SEP 30 1942
Joseph W. Stewart
CLERK

JOSEPH T. SHERIER,
J. ALLAN SHERIER,
1001 15th Street, Northwest,
Washington, D. C.,
Attorneys for Appellee.

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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IN THE

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA.

No. 8225.

MARION C. MYERS, *Appellant*,

v.

H. L. RUST COMPANY, a Corporation, *Appellee*.

BRIEF ON BEHALF OF APPELLEE.

STATEMENT OF CASE.

On December 2, 1941, counsel for the parties entered into a stipulation, by which it was agreed that judgment for possession of the premises involved should be entered by the court below as of that date, with a stay of execution until January 31, 1942. (Appellant's App., p. 3) Thus, any defense the appellant had was waived. The appellant was represented by counsel, and was present in court at the time the stipulation was signed and the judgment entered. In reliance upon this stipulation, the appellee relinquished its right to proceed to judgment and the immediate issuance of a writ of restitution as authorized by Sec. 271 of Title 24 of the 1929 Code of Law for the District of Columbia, which provides:

> Where the right to issue an execution is not suspended by agreement or by an injunction or by an appeal operating as a supersedeas, a writ of execution may be issued immediately on the rendition of the judgment or at any time within three years thereafter; and where the right to issue the same is suspended by any of the causes aforesaid said writ may be issued within three years after the removal of the suspension, and every such writ shall be returnable on or before the sixtieth day after its date.

On January 28, 1942, the appellant filed her motion to stay the issuance of the writ of restitution on the ground that the Emergency Rent Act repealed or suspended the above mentioned provision of the Code, defining the manner in which execution may be stayed. (Appellant's App., p. 4)

After hearing, the motion was denied, (Appellant's App., p. 4) as was also a subsequent motion for rehearing. (Appellant's App., p. 13)

SUMMARY OF ARGUMENT.

I. The Act did not become effective until the thirtieth day following December 2, 1941. This clearly appears from the terms of the Act itself.

II. It was not the intention of Congress that the Act should be given a retroactive effect. This is so because by the terms of the Act it was not to become effective until thirty days after its passage. Furthermore, to give the Act such effect would in the instant case destroy vested rights of the appellee growing out of the consent judgment.

III. The Rent Act did not repeal Sec. 271 of the Code, *supra*. Both statutes may be given effect in their appropriate fields.

IV. Having received the benefits of the stipulation staying execution on the judgment, the appellant is estopped to repudiate its obligation.

ARGUMENT.

I & II. The Act is Not Retroactive.

In the motion of the appellant to stay the issuance of the writ of restitution, it was conceded that the Act did not become effective until January 2, 1942. By its terms, the Act was not to take effect until that date, as will appear from an examination of Secs. 2 and 5(a) thereof. In Sec. 2, and again in sub-paragraph 2 thereof, the language used is: "On and after the thirtieth day following the enactment of this act, etc." And, in Sec. 5(a) it is provided: "Nothing herein shall be construed to require the refund of any rent paid or payable for the use or occupancy of housing accommodations *prior to the thirtieth day following the enactment of this act.*" Supporting this theory as to the effective date of the Act is the fact that the Administrator charged with the enforcement thereof did not take office until after December 2, 1941, and that his office has treated the statute as effective January 2, 1942.

The primary purpose of the Act is to establish "maximum rent ceilings and minimum service standards" for housing accommodations in the D. C. By the terms of the Act, the accomplishment of this object was postponed until "the thirtieth day following the enactment of this Act."

The other provisions of the Act are ancillary to and in aid of the principal purpose of the legislation. Obviously, Congress did not intend these latter provisions of the Act to become effective in advance of those designed to accomplish the main purpose of the Act. Nor does the language of paragraph 5, Sec. b, permit of such interpretation, because those sections all deal with violations occurring after the effective date of the Act.

Not only does the Act itself clearly indicate that it was not to operate retrospectively, but it is well settled by repeated decisions of the United States Supreme Court that in order to give an act of Congress retroactive effect the intent so to do must be expressed in clear and unequivocal language. There is nothing in the Act which satisfies this requirement. On the contrary, its language and the construction given to the Act by the Administrator all clearly indicate that it was not the intention of Congress to make the Act retroactively effective. And it is to be presumed that Congress knew of the provisions of existing law authorizing the immediate issuance of writs of restitution and that if it had intended to change the law in that respect clear and unmistakable language would have been employed to accomplish that purpose.

In the early case of *United States* v. *Heth,* 3 Cranch 399, 413, the Supreme Court stated the rule as to the retroactive effect of statutes in the following language:

> Words in a statute ought not to have a retrospective operation, unless they are so clear, strong, and imperative, that no other meaning can be annexed to them, or unless the intention of the legislature cannot be otherwise satisfied. This rule ought especially to be adhered to, when such a construction will alter the pre-existing situation of parties, or will affect or interfere with their antecedent rights, * * *; which is so obviously improper, that nothing ought to uphold and vindicate the interpretation, but the unequivocal and inflexible import of the terms, and the manifest intention of the legislature.

Again in *McEwen* v. *Den,* 24 Howard 242, 244, that Court said:

> * * * it is of the very essence of a new law that it *shall apply to future cases,* and such must be its construction, unless the contrary clearly appears.

In *Cook* v. *United States,* 138 U. S. 157, 181, it is said:

> * * * courts uniformly refuse to give to statutes a retrospective operation, where rights previously vested are injuriously affected, unless compelled to do so by language so clear and positive as to leave no room to doubt that such was the intention of the Legislature. *United States* v. *Heth,* 7 U. S. 3 Cranch, 399, 413 (2:

479, 483); *Chew Heong* v. *United States,* 112 U. S. 536, 559 (28: 770, 778).

In *Lewellyn* v. *Frick,* 268 U. S. 238, 69 L. ed. 934, the question was whether the provision of the Revenue Act of 1919, including in the estate of a decedent subject to tax, insurance under policies taken out by deceased upon his own life, applied to policies, the right to the proceeds of which had vested in other beneficiaries before the passage of the statute. In holding that the Act did not so apply, retroactively, the court said:

> Not only are such doubts avoided by construing the statute as referring only to transactions taking place after it was passed, but the general principle "that laws are not to be considered as applying to cases which arose before their passage" is preserved, when to disregard it would be to impose an unexpected liability that, if known, might have induced those concerned to avoid it, * * *.

And, in *United States* v. *Magnolia Petroleum Co.,* 276 U. S. 160, the Supreme Court followed its earlier rulings, saying:

> Statutes are not to be given retroactive effect or construed to change the status of claims *fixed in accordance with earlier provisions* unless the legislative purpose so to do plainly appears.

The fact that Sec. 2 of the Act prescribed that maximum rent ceilings and minimum service standards were to be fixed at the January 1, 1941 level does not indicate an intention on the part of Congress to make the Act retroactive in effect. In *Neild* v. *District of Columbia,* 71 App. D. C. 306, 315, 110 F. 2d 246, it was claimed that the Business Privilege Tax Act was retroactive in its operations because the tax was based upon the gross income of the taxpayer for the year preceding the enactment of the law. Answering this contention, this Court stated:

> "A statute is not retroactive merely because it draws upon antecedent facts for its operation," and that is all the Act does in the present case. *Lewis* v. *Fidelity & Deposit Co.*, 292 U. S. 559, 571, 54 S. Ct. 848, 853, 78 L. ed. 1425, 92 A. L. R. 794; *United States* v. *Jacobs,* 306 U. S. 363, 367, 59 S. Ct. 551, 83 L. ed. 763; *Home Indemnity Co.* v. *Missouri,* 8 Cir. 78 F. 2d 391, 394.

Assuming that Congress intended the Rent Act to operate prospectively, as required by the decisions of the Supreme Court, it would seem to follow that the word "maintainable" used in Sec. 5(b) of the Act clearly relates to future actions and not to proceedings which had ripened into judgments definitely fixing the rights of the parties prior to the effective date of the Act. Therefore the word "maintainable" as used in the Act obviously refers to the prohibition against the *commencement* of actions or proceedings on and after January 2, 1942. (See appellant's brief p. 16) Such a construction of the Act would be consistent with its terms and the decisions of the Supreme Court, would not conflict with existing law, and would avoid any question as to the validity of the Act itself.

In *Bruenn* v. *North Yakima School District,* 101 Wash. 374, 172 Pac. 569, the plaintiff on June 3, 1916 obtained judgment in a tort action against the District. On March 12, 1917 the State Legislature enacted a statute which provided that "no action shall be brought or maintained against any school district or its officers for any noncontractual acts or omissions of such district". On the effective date of this statute the case was pending on appeal in the Supreme Court of the State.

The Court said:

> "There are three possible classes of actions to which the statute may apply. First, cases which had arisen but upon which no action had been instituted, or causes that might arise in the future; second, actions which had been instituted but had not gone to final judgment when the statute took effect; and third, actions in which a final judgment had been entered when the act became effective.

"It is the contention of the appellant that the act applies to all three classes of actions. It is the contention of the respondent that the act does not apply to those actions in which a judgment had been previously entered. The act provides that no action shall be 'brought or maintained'. By use of the two words brought or maintained it was evidently the legislative intent that they should not be given a synonymous or equivalent meaning. Had the word 'brought' not appeared in the statute, it may be that the word 'maintained' could then be given the meaning as only preventing the institution of actions, and as not applying to those which had been previously begun. This was the view entertained by the Supreme Court of the State of Maine in *Burbank* v. *Inhabitants of Auburn,* 31 Me. 590. The act which the court was considering in that case contained only the word 'maintained' and it was held not to apply to actions which had been previously brought. * * *

"The word 'brought' obviously applies to all actions which had not been instituted prior to the time the act took effect, whether the cause of action had arisen at that time or not. The question then arises whether the word 'maintained' applies both to causes of action which had been previously instituted but which had not gone to judgment and to actions in which a final judgment had been entered at the time the act took effect. Retroactive statutes are generally regarded with disfavor, and where it does not clearly appear that such was the legislative intent, the court will not give the statute a retroactive effect where to do so would impair existing rights." * * *

"At the time the above-mentioned act was passed, the respondent had an existing right in the judgment which had previously been obtained against the school district. As already pointed out, there is a class of actions to which the act could apply other than those in which a final judgment had been entered. There being a field in which the statute may operate without applying it to actions in which a judgment had already been entered, we think it was not the legislative intention that it should apply to the latter class of actions and thus destroy existing rights arising out of a final judgment."

"But it is argued that, since the action was *pending* on appeal subsequent to the time when the statute took

> effect, the word 'maintained' is applicable. This contention does not seem to us sound * * *. As already pointed out, while the present case was pending on appeal, the respondent, within the meaning of the statute, was not 'maintaining' an action here."

See also: *Smith* v. *Lyon*, 44 Conn. 175; *New Carlisle Bank* v. *Brown*, 11 Ohio C. C. 77; *Grasso* v. *Holbrook, et al.*, 102 App. Div. 49, 92 N. Y. Supp. 101, 103; *Amalgamated Zinc & L. Co.* v. *Bay State Zinc Co.*, 221 Mo. 7, 120 S. W. 31.

Since the word "maintain" may mean to commence or institute an action or proceeding, can it fairly be said that Congress, in the use of the word "maintainable," evinced an intention to give the Act a retrospective operation in terms so clear, strong and imperative, that no other meaning can be annexed to them or the legislative intent be otherwise satisfied?

It is submitted that a ruling that Congress intended the Act should operate retrospectively would not be justified by the terms of the statute, would be in conflict with the decisions of the Supreme Court and would repeal or nullify Sec. 271 of the D. C. Code, providing the manner in which executions on judgments may be stayed. Such a holding would also deprive the appellee of its vested right to the possession of its property, which right had accrued and was fixed by existing law before the Rent Act became effective.

III. Section 271 of the Code Not Repealed or Suspended.

Under the law as it existed in the District of Columbia on November 1, 1941, the date of the expiration of the notice to quit given the appellant by the appellee the latter was clearly entitled to possession of the premises involved. The Rent Act did not purport to retroactively take away or affect the right of the appellee, but merely changed the grounds upon which *claim to possession might be based after January 2, 1942.* Nowhere in the Act is there any language which attempts to change the grounds for obtaining possession before January 2nd or to make the Act retrospective as to all possessory actions prior to that date. To hold that the Act affected the rights of the appellee on November 1, 1941, would seem to permit also the reopening and questioning of all such actions finally determined before January 2, 1942.

The Rent Act makes no provision for the enforcement of judgments for possession of real property secured upon the grounds set forth in the Act. Therefore, Section 271 of the Code is still in force and provides the only means for carrying into effect judgments rendered under the Act. If it be held that the Rent Act repealed Section 271, then, obviously, judgments obtained under the Act are presently unenforceable. Clearly, Congress intended, not only that each of these statutes should be given effect, but that they should operate in conjunction. Section 271, therefore, must apply to both classes of cases—those in which judgment for possession was obtained before, as well as after, the effective date of the Act.

The District of Columbia Rent Act contains no provision *prohibiting the issuance of a writ of restitution on judgments obtained before the effective date of the Act,* as did the New York Rent Act of 1920. Congress might have inserted such a provision in the Rent Act for the District of Columbia. Its failure to do so argues strongly that it did not intend the Act should affect existing judgments.

It is the established rule of construction that where two statutes relating to the same subject-matter exist, each statute must be given effect unless it clearly appears to have been the legislative intent that the later statute suspended or repealed the former, and courts will not hold to a repeal if they can find reasonable ground to hold to the contrary.

Section 271 of the Code and the Rent Act can both be given effect without defeating the intent of Congress.

In *United States* v. *Claflin,* 97 U. S. 546, 549, the court stated:

> Whether a statute was repealed by a later one is a judicial, not a legislative question. And even a declaratory Act, or an Act directing how a former Act shall be

construed, *is inoperative on the past,* though controlling in future.

The court, in *United States* v. *One Ford Automobile,* 292 Fed. 207, 210, announced the rule as follows:

> The intent to repeal must very clearly appear, and courts will not hold to a repeal if they can find reasonable ground to hold to the contrary.
>
> "A rule of law established by judicial decisions and by statute, and rigidly adhered to for many years, should not be held to have been abrogated by a subsequent statute unless the intention of the Legislature so to abrogate the same is expressed in clear terms, or by necessary implication."

And, in *Continental Insurance Co.* v. *Simpson,* 8 F. (2d) 439, 441, 442, it was said:

> There is no difference in the courts as to the law. Repeals by implication are not favored. The Legislature is presumed to legislate *with knowledge of former related statutes,* and to express its intention to repeal them. Repeal will be implied only when necessary, because the last or dominant statute admits of no other reasonable construction.
>
> "The repugnancy between the later act upon the same subject and the former legislation must be such that the first act cannot stand and be capable of execution consistently with the terms of the later enactment." *Lewis* v. *U. S.,* 244 U. S. 134, 144, 37 S. Ct. 570, 574 (61 L. Ed. 1039).
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> * * *
>
> "It is * * * necessary to the implication of a repeal that the objects of the two statutes are the same, in the absence of any repealing clause. If they are not, both statutes will stand, though they may refer to the same subject."

IV. Appellant is Estopped to Repudiate Her Stipulation.

The appellant is estopped to repudiate the stipulation entered into on December 2, 1941; for the appellee, in reliance thereon, refrained from the immediate prosecution of its suit and summary execution on a judgment for possession, and granted to the appellant two additional months' occupancy of the demised premises. Under such circumstances, where one of the parties has changed his position and relinquished rights in reliance on the stipulation, the other party will not be permitted to avoid his agreement.

In *Pacific Ry. Co.* v. *Ketchum*, 101 U. S. 289, 297, the Supreme Court said:

> Parties to a suit have the right to agree to anything they please in reference to the subject-matter of their litigation, and the court, when applied to, will ordinarily give effect to their agreement, if it comes within the general scope of the case made by the pleadings. * * * All these were matters about which the parties might properly agree; and having agreed, it does not lie with them to complain of what the court has done to give effect to their agreement.

Mutual Life Insurance Co. v. *O'Donnell,* 146 N. Y. 275, involved the effect of an oral stipulation between the parties, there being in force a rule of court requiring all stipulations to be in writing. In holding the party to his oral stipulation, the court said:

> Whilst the oral stipulation under the rule is not binding and will not be carried into effect by the court, still it will not permit a party to be misled, deceived, or defrauded by means thereof, and in some instances where it has been acted upon the party making it will not be permitted to retract and take advantage of the acts or omissions of his adversary thereby induced.

V. Appellant's Authorities Distinguishable.

The cases relied upon by the petitioner are believed to be clearly distinguishable.

In *Metropolitan Life Insurance, Inc.* v. *Schmidtman, L. & T. No. 940-681,* decided on January 27, 1942, by Judge Cayton of the court below, the judgment was not by consent, as in this case, and counsel for the plaintiff *conceded that the language of Sec. 5 (b) of the Rent Act was an effective bar against further proceedings in the case unless* *it appeared that the complaint came within one of the exceptions mentioned in the Act.* Here, in reliance upon the appellant's agreement to vacate, the appellee, with the consent of the court, granted her the right to occupy the premises in question for an additional term of two months and refrained from issuing an immediate writ of restitution as authorized by Sec. 271 of the Code. After thus receiving the benefit of the agreement, the appellant now seeks to repudiate the arrangement and avail herself of defenses not in existence at the time the stipulation was executed and the appellee's right to the property had become fixed. As hereinabove shown, the courts have applied the doctrine of estoppel to prevent parties from evading their obligations, particularly when the opposite party has changed his position in reliance thereon.

Contrary to the position taken by the plaintiff in the *Metropolitan Insurance* case, supra, the appellee here contends that the statute is not retroactive in its operation and does not affect the rights of the appellee, which had become fixed before the effective date of the Act.

The appellant cites the case of *People* v. *Fagan,* 230 N. Y. 653, 186 N. Y. Supp. 23, which was relied upon by Judge Cayton in the *Metropolitan Insurance* case, together with other New York authorities. In all of those cases, the applicable New York statute in express words *prohibited the issuance of a warrant (execution) for possession in a pending proceeding for the recovery of real property.* Thus clearly indicating the intention of the legislature that the act should apply to judgments for possession obtained prior to the enactment of the statute. The distinction between that statute and the District Rent Act is obvious, since there is no provision in the local act prohibiting the issuance of a writ of restitution on existing judgments, nor are there any provisions of that Act which repeal or suspend Sec. 271 of the Code, authorizing the immediate execution on a judgment. In the absence of such provision, it must be assumed that Congress did not intend the Act to apply to judgments entered before its effective date. Furthermore, the instant action was not pending when the Act became effective but prior thereto had ripened into a final judgment by consent of the parties.

CONCLUSION.

It is believed that the other cases relied upon by the petitioner have no application to the issue here presented.

It is therefore respectfully submitted that the judgment of the court below was right and should not be disturbed.

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